

Bold = new language

~~Strikeout~~ = existing language deleted in this rulemaking

TITLE 329 SOLID WASTE MANAGEMENT DIVISION

DRAFT RULE

LSA Document #14-19

DIGEST

Amends 329 IAC 16-1-1; 329 IAC 16-2-26; 329 IAC 16-3-1; 329 IAC 16-5-1; 329 IAC 16-6-1; 329 IAC 16-7-1; 329 IAC 16-10-1; 329 IAC 16-11-1; and adds 329 IAC 16-11-2; 329 IAC 16-11-3; 329 IAC 16-11-4; 329 IAC 16-11-5 concerning the management of electronic waste. Effective 30 days after filing with the Publisher.

HISTORY

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329 IAC 16-1-1; 329 IAC 16-2-26; 329 IAC 16-3-1; 329 IAC 16-5-1; 329 IAC 16-6-1; 329 IAC 16-7-1; 329 IAC 16-10-1; 329 IAC 16-11-1; 329 IAC 16-11-2; 329 IAC 16-11-3; 329 IAC 16-11-4; 329 IAC 16-11-5.

DRAFT RULE

SECTION 1. 329 IAC 16-1-1 IS AMENDED TO READ AS FOLLOWS:

329 IAC 16-1-1 Purpose

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3

Affected: IC 13-30-2-1; IC 36-9-30-35

Sec. 1. (a) This article regulates electronic waste (**e-waste**) through the following:

- (1) Providing for the registration of facilities storing or processing electronic waste.
- (2) Providing standards for storing or processing electronic waste.
- (3) Providing cleanup and closure standards for storing or processing electronic waste.
- (4) Providing financial assurance for the cleanup and closure of facilities storing or processing electronic waste.

(b) The purpose of this article is to implement the following statutes relative to electronic waste:

(1) IC 13-30-2-1(3) and IC 13-30-2-1(4) regarding the deposit of contaminants or solid waste upon the land.

(2) IC 13-30-2-1(5) and IC 36-9-30-35 prohibiting dumping, causing, or allowing the open dumping of garbage or of other solid waste.

(c) This article replaces all hazardous waste standards and requirements under 329 IAC 3.1 for e-waste that is ~~a hazardous waste~~, **being recycled**, except:

(1) disposal or incineration requirements under 329 IAC 16-9-1; and ~~except~~

(2) export requirements.

(d) This article replaces all solid waste processing standards and permitting requirements under 329 IAC 11 for e-waste, except disposal or incineration requirements under 329 IAC 16-9-1. *(Solid Waste Management Division; 329 IAC 16-1-1; filed Aug 15, 2007, 10:22 a.m.: 20070912-IR-329050181FRA; readopted filed Jul 29, 2013, 9:20 a.m.: 20130828-IR-329130179BFA)*

SECTION 2. 329 IAC 16-2-26 IS AMENDED TO READ AS FOLLOWS:

329 IAC 16-2-26 "Financial assurance" defined

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3

Affected: IC 13-30-2; IC 36-9-30

Sec. 26. "Financial assurance" means, for the purposes of this article, a bond, **letter of credit, insurance, or trust fund** acquired by the owner, operator, or registrant of the registered facility in an amount sufficient to provide for:

(1) remediation of contamination at the registered facility; and

(2) closure of the registered facility.

(Solid Waste Management Division; 329 IAC 16-2-26; filed Aug 15, 2007, 10:22 a.m.: 20070912-IR-329050181FRA; readopted filed Jul 29, 2013, 9:20 a.m.: 20130828-IR-329130179BFA)

SECTION 3. 329 IAC 16-3-1 IS AMENDED TO READ AS FOLLOWS:

329 IAC 16-3-1 Exclusions

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3

Affected: IC 13-30-2; IC 36-9-30

Sec. 1. (a) The following are excluded from regulation under this article:

(1) A site where there is electronic waste in an amount equal to or less than forty-six thousand (46,000) pounds or twenty-three (23) tons enclosed in a building or an enclosed

lockable trailer.

(2) Short term electronic waste collection and storage, where e-waste or electronic devices are removed within five (5) business days after the conclusion of the short term electronic waste collection and storage and removed and transported to:

- (A) a facility registered under this article;
- (B) a permitted facility; or
- (C) an appropriate facility out of state.

(3) Brokers of electronic waste that do not take physical possession of the e-waste or electronic debris.

(4) Electronic device refurbishing or retailers of refurbished electronics.

(5) Facilities that:

- (A) hold a valid permit under 329 IAC 3.1, 329 IAC 10, or 329 IAC 11; and
- (B) process and store the e-waste according to those permit requirements.

(6) Any storage or processing that takes place where the e-waste is **initially** generated. ~~including households and conditionally exempt small quantity hazardous waste generators.~~

~~(7) Hazardous waste generators, other than conditionally exempt small quantity hazardous waste generators, are exempt from this article but in order to be exempt must comply with the following regarding e-waste that is intended for recycling:~~

~~(A) Storage and transportation of the e-waste that is hazardous waste must not cause contamination.~~

~~(B) Disposal must be accomplished according to 329 IAC 16-9.~~

~~(C) Storage of broken e-waste that is a hazardous waste must be in a building with a roof, floor, and walls or the broken e-waste that is hazardous waste must be placed in a container, such as a barrel or a vehicle that is constructed, filled, and closed to minimize releases to the environment including fines, which are small particles from the broken e-waste that is a hazardous waste.~~

~~(D) Each container, which contains only broken CRTs, must be labeled or marked clearly with one (1) of the following phrases: "Used cathode ray tube(s) contains leaded glass" or "Leaded glass from televisions or computers". It must also be labeled: "Do not mix with other glass materials."~~

~~(E) There can be no speculative accumulation, and the e-waste must be disposed of according to 329 IAC 16-9-1.~~

~~(F) Each container, which contains broken e-waste that is a hazardous waste other than CRTs, must be labeled or marked clearly "Electronic Waste".~~

~~(G) The broken CRTs and other broken e-waste that is a hazardous waste must be transported in a container that is constructed, filled, and closed to minimize identifiable releases to the environment including fines, which are small particles from the broken CRTs and broken e-waste that is a hazardous waste.~~

~~(8)~~ (7) Any recycling operation, such as a materials recovery facility, that may have incidental amounts of e-waste mixed with larger volumes of recyclables.

(b) In order to be excluded from regulation under this article, small quantity hazardous waste generators and large quantity hazardous waste generators, including generators that meet any of the exclusions in subsection (a), must comply with the following:

(1) Storage and transportation of the e-waste must be in a manner to minimize the release of contaminants to the environment.

(2) Disposal must be accomplished according to 329 IAC 16-9.

(3) Storage of broken e-waste must be in:

(A) a building with a roof, floor, and walls; or

(B) an enclosed container.

(4) Each container that contains only broken CRTs must be labeled or marked clearly with the following:

(A) One (1) of the following phrases:

(i) "Used cathode ray tube(s)—contains leaded glass".

(ii) "Leaded glass from televisions or computers".

(B) "Do not mix with other glass materials".

(5) Speculative accumulation is prohibited.

(6) Each container that contains broken e-waste other than CRTs must be labeled or marked clearly "Electronic Waste".

(7) The broken CRTs and other broken e-waste must be transported in an enclosed container.

(Solid Waste Management Division; 329 IAC 16-3-1; filed Aug 15, 2007, 10:22 a.m.: 20070912-IR-329050181FRA; readopted filed Jul 29, 2013, 9:20 a.m.: 20130828-IR-329130179BFA)

SECTION 4. 329 IAC 16-5-1 IS AMENDED TO READ AS FOLLOWS:

329 IAC 16-5-1 Registration

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3

Affected: IC 4-21.5-3; IC 13-15-7; IC 13-30-2; IC 36-9-30

Sec. 1. (a) The owners or operators of all applicable facilities listed under 329 IAC 16-1-2 are required to register, unless exempted under 329 IAC 16-3-1 or permitted under 329 IAC 16-4-1. A registration is for a fixed term not to exceed five (5) years.

(b) The registration form must be:

(1) filled out completely; and

(2) submitted to the commissioner on a form or in a format provided by the commissioner.

(c) The commissioner may require the registration to be submitted electronically, as specified in subsection (d), with an electronic signature.

(d) A registration may be submitted ~~electronically~~ via electronic media, such as the

following:

- ~~(1) Magnetic storage tape or disk.~~
- ~~(2) (1) Compact disc read-only memory or CD-ROM.~~ **digital video disc.**
- ~~(3) (2) Electronic mail or attachments to electronic mail.~~
- ~~(4) (3) File transfer protocol or FTP.~~
- ~~(5) (4) Hypertext transfer protocol or HTTP.~~
- (5) Other electronic media deemed acceptable by the department.**

(e) The registration must be renewed as follows:

(1) ~~At least every~~ **When any of the following occur:**

(A) Five (5) years ~~or when~~ **have elapsed since the last renewal.**

(B) **The commissioner determines that** the process at the facility changes ~~or when~~ **from the description in the current registration.**

(C) The amounts **in tons** of e-waste or electronic debris specified in subsection (f)(5) change.

(2) The renewal form must be submitted at least sixty (60) days before the expiration date of the registration.

(f) The registration must include the following information:

(1) The name of the owner, operator, and landowner, if different from the registered facility owner.

(2) Addresses and telephone numbers for the owner, operator, and landowner.

(3) The location of the facility.

(4) The type of facility.

(5) The maximum amounts, in tons, of e-waste or electronic debris to be stored on site and the probable duration of storage in business days.

(6) Specify **the location** where electronic waste will be stored in:

(A) a building;

(B) ~~containers;~~ **a container;** or

(C) ~~vehicles.~~ **a vehicle.**

(7) The material for the building floor for all areas where e-waste and electronic debris will be:

(A) stored; or

(B) processed.

(8) A detailed description of ~~the:~~ **e-waste and electronic debris:**

(A) storage;

(B) handling;

(C) processing;

(D) treatment; and

(E) final disposition.

~~of the e-waste and electronic debris.~~

- (9) The maximum total amount, in tons, of e-waste capable of being processed per day.
- (10) Other permits from the department for the facility.
- (11) The date the facility became operational or will be operational.
- (12) A contingency action plan that specifies the following:
 - (A) An outline of the method or methods of waste disposal to be implemented if the registered facility is unable to operate or process.
 - (B) The maximum amounts of e-waste as specified in subdivision (5) and electronic debris on site at any one (1) time.
 - (C) Procedures for controlling:
 - (i) fire;
 - (ii) explosion;
 - (iii) spills; and
 - (iv) contamination.
 - (D) Areas where e-waste and electronic debris are contained or stored.
 - (E) A floor plan of the registered facility.
 - (F) A ~~United States Geological Service (USGS)~~ map that identifies the facility location and any access roads.
 - (G) Telephone numbers for the fire department responsible for responding to a fire or emergency at the registered facility.
- (13) A description of any electronic debris resulting from the processing of e-waste.
- (14) Cleanup procedures for ~~the~~ **areas for**:
 - (A) storage;
 - (B) electronic waste processing;
 - (C) loading; and
 - (D) unloading.

~~areas.~~

- (15) The financial assurance documentation required under 329 IAC 16-11-1.

(g) The owner or operator must sign and submit the following certification with the registration: "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including a fine or imprisonment for a knowing violation. I further certify that I am authorized to submit this information."

(h) The commissioner or a designee may deny, limit the length of, or place additional conditions on a registration ~~if the commissioner determines one (1) or more of~~ **under** the following **circumstances**:

- (1) The commissioner, under IC 13-15-7, has revoked the applicant's previous registration

under this article.

(2) The registration form is incomplete.

(i) The issuance of a registration does not:

(1) convey any property right of any sort or any exclusive privileges;

(2) authorize any injury to persons or private property; ~~or~~

(3) authorize any invasion of other private rights; ~~or~~

(4) authorize any infringement of federal, state, or local laws or regulations; or

~~(3)~~ **(5)** preempt any duty to comply with other state or local requirements.

(j) The commissioner or a designee may revoke or modify a registration issued under this article for any of the following reasons:

(1) Violation of a requirement of this article or a condition of the registration.

(2) Failure to disclose all relevant facts in obtaining a registration under this article.

(3) A misrepresentation made in obtaining a registration under this article.

(4) Failing to meet the requirements for a registration.

(5) Failure to correct a condition as agreed to in an Agreed Order with the department or, within the time established in the Agreed Order, come into compliance with:

(A) the registration;

(B) this article; or

(C) both.

(k) If a registration is modified, denied, or revoked under this article, the owner or operator may appeal under IC 4-21.5-3.

(l) A registration is not transferable. A new owner or operator:

(1) must submit a registration form to the commissioner thirty (30) days in advance of taking ownership of the facility; and

(2) may operate the facility in the interim.

(Solid Waste Management Division; 329 IAC 16-5-1; filed Aug 15, 2007, 10:22 a.m.: 20070912-IR-329050181FRA; readopted filed Jul 29, 2013, 9:20 a.m.: 20130828-IR-329130179BFA)

SECTION 5. 329 IAC 16-6-1 IS AMENDED TO READ AS FOLLOWS:

329 IAC 16-6-1 Storage requirements

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3

Affected: IC 13-30-2; IC 36-9-30

Sec. 1. (a) All registered facilities must store e-waste, electronic debris, and any residue in one (1) of the following:

(1) A building that is weather tight.

- (2) A closed container.
- (3) A covered vehicle.

(b) Any container holding e-waste or electronic debris must have ~~at least a six (6) inch wide by six (6) inch high~~ a label with the following legible information:

- (1) The contents of the container specific to the e-waste or electronic debris.
- (2) The date of delivery at the registered facility or date of recontainment.

(c) Speculative accumulation of electronic waste is not allowed. Facilities registered under this article must engage in only legitimate recycling ~~as demonstrated by~~ **in accordance with** the following:

- (1) The owner or operator of the electronic waste processing facility must have a plan to reuse or recycle the e-waste that provides ~~or shows~~ the following:

(A) Identification of the following:

- (i) The component or components of the electronic waste to be reused, recycled, or processed.
- (ii) The manner in which the electronic waste is intended to be reused, recycled, or processed.
- (iii) The intended market or markets for the component or components of the electronic waste.

(B) A reason why any electronic waste is being stored for periods exceeding one (1) year. Reasons may include ~~the following:~~ **that**

- ~~(i) storage is necessary to accumulate sufficient quantities for shipment or processing that saves additional costs.~~
- ~~(ii) Facilities, equipment, or technologies necessary for processing is currently unavailable but reasonably expected to be available within the foreseeable future.~~

(C) The electronic waste is stored in a manner:

- (i) reflecting its value as a commodity; and
- (ii) in accordance with this rule.

(2) The electronic waste processing facility must maintain records of electronic waste coming into the electronic waste processing facility and materials leaving the electronic waste processing facility, including the following:

(A) The total amount of e-waste received.

(B) The total amount of e-waste or material **derived from e-waste** shipped from the facility for recycling or reuse.

(C) The total amount of e-waste, solid waste, or hazardous waste shipped from the facility for disposal.

(3) Amounts of e-waste, material **derived from e-waste**, solid waste, and hazardous waste:

(A) must be measured in weight only; and

(B) may be kept in a consistent manner **with** either daily, weekly, or monthly

records.

(4) Shipping papers and manifests, as applicable, for shipments of e-waste received and e-waste, solid waste, and hazardous waste shipped from the facility shall be maintained by the facility for a period of three (3) years.

(d) **Adequate measures must be in place to control fire hazards, including the following:**

(1) The building must have fire-extinguishing equipment that complies with the Indiana Fire Code as adopted by the Fire Prevention and Building Safety Commission at 675 IAC 22.

~~Adequate measures must be in place to control fire hazards, and~~

(2) Contingency action plans required under ~~329 IAC 16-7-1(e)~~ **329 IAC 16-5-1(f)(12)** must be submitted to the local fire department that services the area.

(e) ~~The A~~ building, container, or vehicle storing e-waste must:

(1) have access controls in place, such as a locked door or fence with locked gate; and

(2) be secured during nonbusiness hours.

(f) **Other than in designated storage areas**, the land, building, vehicles, and containers must be maintained clean and free of other solid waste, ~~other than in designated storage areas~~, except for incidental amounts of solid waste that is not e-waste.

(g) Storage **on a temporary basis**, including the retention, containment, or accumulation of solid waste other than e-waste, ~~on a temporary basis~~ must be done in such a manner that it does not:

(1) threaten or potentially threaten human health; or

(2) impact or potentially impact the environment.

However, it must be a rebuttable presumption that storage of electronic debris, excluding waste that is a hazardous waste subject to regulation under 329 IAC 3.1 and e-waste, for more than six (6) months constitutes discarding and disposal. (*Solid Waste Management Division; 329 IAC 16-6-1; filed Aug 15, 2007, 10:22 a.m.: 20070912-IR-329050181FRA; readopted filed Jul 29, 2013, 9:20 a.m.: 20130828-IR-329130179BFA*)

SECTION 6. 329 IAC 16-7-1 IS AMENDED TO READ AS FOLLOWS:

329 IAC 16-7-1 Operational requirements

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3

Affected: IC 13-30-2; IC 36-9-30

Sec. 1. (a) A building used for processing or storage of e-waste must have the following:

(1) A sign **that:**

(A) **is** at least one (1) foot high by two (2) feet wide;

(B) **is** prominently displayed by the door; and

(C) legibly ~~containing~~ **contains** the following information in letters at least one (1)

inch high:

~~(A)~~ (i) The name of the facility.

~~(B)~~ (ii) The hours the registered facility is open to accept e-waste from the public. If the facility does not accept e-waste from the public, this information can be omitted.

~~(C)~~ (iii) The registration number.

~~(D)~~ (iv) Clearly says the following, "Electronic waste is stored and/or processed inside.".

~~(E)~~ (v) The name and telephone number of a designated emergency contact person.

(2) A roof, a floor that is concrete or other impervious surface, and the building is completely enclosed.

(3) Adequate measures must be in place to control fire hazards, and equipment must be available to control fires. ~~Contingency action plans required under subsection (c)(2) must be submitted to the local fire department that services the area.~~

(4) A telephone, cellular telephone, or radio communication device available when employees are present and the building is in use.

(b) Containers and vehicles that contain e-waste for processing or that has been processed must have ~~at least a six (6) inches wide by six (6) inches high~~ a label attached that contains the following legible information:

(1) The contents of the container specific to the e-waste or electronic debris.

(2) The date, within three (3) days, when the container becomes full.

(c) The owner or operator shall record and retain at the registered facility, or in an alternative location approved by the commissioner, all records, reports, or audits required by this article until certification of closure is deemed adequate by the commissioner under 329 IAC 16-10-1(e). The following information must be retained:

(1) A paper copy or an accessible copy of the electronically submitted registration.

(2) A contingency action plan as required under 329 IAC 16-5-1(f)(12).

(3) The records required under 329 IAC 16-6-1(c)(2).

(4) The training log required under 329 IAC 16-8-1(b).

(5) The results of any waste determination tests on electronic debris and residues generated by the registered facility.

(d) The following must be furnished as required and made available during normal operating hours for inspection by any officer, employee, or representative of the commissioner:

(1) All records required by this article.

(2) All test results of electronic debris and residues generated by the registered facility and disposed.

(e) No hazardous waste that is regulated by 329 IAC 3.1 shall be processed at any registered facility, except for e-waste as defined in this article, unless the facility is permitted under 329 IAC 3.1 to process hazardous waste. (*Solid Waste Management Division; 329 IAC 16-7-1; filed Aug 15, 2007, 10:22 a.m.: 20070912-IR-329050181FRA; readopted filed Jul 29, 2013, 9:20 a.m.: 20130828-IR-329130179BFA*)

SECTION 7. 329 IAC 16-10-1 IS AMENDED TO READ AS FOLLOWS:

329 IAC 16-10-1 Closure

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3

Affected: IC 13-12-3-2; IC 13-30-2; IC 36-9-30

Sec. 1. (a) The owner, operator, or registrant must notify the commissioner at least fourteen (14) days before the date when the registered facility permanently ceases accepting e-waste.

(b) **Within sixty (60) days of the registered facility no longer accepting e-waste**, all e-waste and electronic debris must be:

(1) removed from the:

(A) building;

(B) land;

(C) containers; and

(D) vehicles; and

(2) disposed of according to 329 IAC 16-9-1.

~~within sixty (60) days of the registered facility no longer accepting e-waste.~~

(c) Any contaminants resulting from the e-waste storage or processing that exceed the risk based remediation standards under IC 13-12-3-2 must be contained, removed, and disposed of according to 329 IAC 16-9-1. This requirement does not include any contaminants existing before the storage or processing of e-waste.

(d) A registered facility must be certified closed under subsection (e) after all waste is removed and disposed of in accordance with 329 IAC 3.1, 329 IAC 10, or 329 IAC 13, as applicable.

(e) The owner, operator, or registrant must send a certification statement indicating that the requirements of this section have been met to the commissioner within thirty (30) days after completion of the closure.

(f) The closure certification **in subsection (e)** will be deemed adequate unless within ninety (90) days of receipt of the closure certification, the commissioner issues a notice of deficiency of closure, including actions necessary to correct the deficiency.

~~(f)~~ **(g)** After the closure certification is deemed adequate by the commissioner **and the facility is notified in writing by the commissioner**, the owner, operator, or registrant of the registered facility is released from the obligation of maintaining closure financial responsibility. *(Solid Waste Management Division; 329 IAC 16-10-1; filed Aug 15, 2007, 10:22 a.m.: 20070912-IR-329050181FRA; filed Jan 30, 2013, 12:29 p.m.: 20130227-IR-329120379FRA)*

SECTION 8. 329 IAC 16-11-1 IS AMENDED TO READ AS FOLLOWS:

329 IAC 16-11-1 Financial assurance for cleanup and closure

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3

Affected: IC 13-14; IC 13-30-2; IC 36-9-30

Sec. 1. (a) All owners, operators, and registrants that are required to register under this article shall establish financial responsibility with the department for closure of the registered facility. ~~The financial responsibility must be provided as a surety bond as specified in subsection (d) in the amount that will provide for closure of the registered facility in the event the owner, operator, or registrant has failed to close the registered facility.~~ **The following mechanisms may be used to provide financial responsibility:**

- (1) A trust fund as specified in section 2 of this rule.**
- (2) A surety bond as specified in section 3 of this rule.**
- (3) A letter of credit as specified in section 4 of this rule.**
- (4) Insurance as specified in section 5 of this rule.**

(b) The financial responsibility must be in the amount that will provide for closure of the registered facility if the owner, operator, or registrant has failed to close the registered facility. The amount that will provide for closure is determined by multiplying the maximum amount in tons of e-waste, electronic devices, and electronic debris on site at any one (1) time by two hundred dollars (\$200).

(c) If there is a change to the maximum amount of e-waste, electronic devices, and electronic debris specified in 329 IAC 16-5-1(f)(5), the owner, operator, or registrant must update the amount in subsection (b) within thirty (30) days after the change.

~~(e)~~ **(d)** For electronic waste brokers handling only intact electronic devices, a **current** contract with another person to pick up all electronic devices that is provided to the department will serve in lieu of the ~~surety bond~~ **financial assurance mechanism** as required in subsection (a).

~~(d) The surety bond is established as follows:~~

~~(1) On:~~

~~(A) forms provided by the commissioner; or~~

~~(B) such other forms as approved by the commissioner.~~

(2) All surety bonds must contain the following:

(A) ~~The establishment of penal sums in the amount determined by subsection (b).~~

(B) ~~Provision that the surety will place the amount that will provide for closure into a standby trust fund, as directed by the commissioner, upon notice from the commissioner that the owner, operator, or registrant has failed to close the facility.~~

(C) ~~Provision that the surety may not cancel the bond without first sending notice of cancellation by certified mail to the owner, operator, or registrant and the commissioner at least one hundred twenty (120) days before the effective date of the cancellation.~~

(D) ~~Provision that the owner, operator, or registrant may not terminate the bond without prior written authorization by the commissioner.~~

(3) The surety company issuing the bond must be:

(A) ~~among those listed as acceptable sureties for federal bonds in Circular 570 of the United States Department of the Treasury; and~~

(B) ~~authorized to do business in Indiana.~~

(4) ~~The surety will not be liable for deficiencies in the performance of closure by the owner, operator, or registrant after the closure certification is submitted to the commissioner.~~

(5) ~~The owner, operator, or registrant shall establish a standby trust fund to be utilized in the event the owner, operator, or registrant fails to fulfill closure obligations and the bond guarantee is exercised. Such trust fund must be established in accordance with the following:~~

(A) ~~On forms provided by the commissioner or forms as approved by the commissioner.~~

(B) ~~The establishment of a standby trust fund in the amount determined by subsection (b) for commissioner approved work done to close the facility.~~

(C) ~~The requirement of successor trustees to notify the commissioner, in writing, of their appointment at least ten (10) days prior to the appointment becoming effective.~~

(D) ~~The requirement that the funded trust is irrevocable unless terminated in writing by the commissioner.~~

(E) ~~The requirement that all signatures be notarized by a notary public commissioned to be a notary public in the state of Indiana at the time of notarization.~~

(F) ~~The requirement that the trustee is authorized to act as a trustee and is an entity whose operations are regulated and examined by a federal agency and state of Indiana agency.~~

(e) The owner, operator, or registrant may use a single ~~surety bond~~ **financial assurance mechanism** to meet the requirements for more than one (1) facility. Evidence of financial responsibility submitted to the commissioner must include a list showing, for each facility, the following:

(1) The registration number, name, and address.

(2) The amount of funds available through the ~~surety bond~~ **financial assurance mechanism** that must be not less than the sum of funds that would be available if a separate ~~surety bond~~

mechanism had been established and maintained for each facility.

(f) An owner, operator, or registrant shall do the following:

(1) Notify the commissioner by certified mail within ten (10) days after commencement of a voluntary or involuntary proceeding under bankruptcy under 11 U.S.C. 101 et seq., October 1, 1979, naming the owner, operator, or registrant as debtor. An owner, operator, or registrant who has a ~~surety bond~~ **financial assurance mechanism** shall be deemed to be without the required financial responsibility in the event of bankruptcy of the institution issuing the ~~surety bond~~. **financial assurance mechanism**.

(2) Reestablish financial responsibility within sixty (60) days after ~~such an event~~ **loss of a financial assurance mechanism due to bankruptcy**. The registered facility cannot operate outside the sixty (60) day period without establishing a ~~surety bond~~ **financial assurance mechanism** for the amount required under subsection (b).

(g) In addition to any other penalties provided for in this article or in IC 13-14 and IC 13-30, any failure to obtain, maintain, or fund financial assurance as required by this rule within the prescribed time limits shall be:

(1) deemed to endanger human health or the environment; and

(2) grounds for a proceeding to revoke the facility's registration or to order final closure of the registered facility.

(h) After the closure certification is deemed adequate by the commissioner **and the facility is so notified in writing by the commissioner**, the owner, operator, or registrant of the registered facility is released from the obligation of maintaining financial assurance under this article. (*Solid Waste Management Division; 329 IAC 16-11-1; filed Aug 15, 2007, 10:22 a.m.: 20070912-IR-329050181FRA; readopted filed Jul 29, 2013, 9:20 a.m.: 20130828-IR-329130179BFA*)

SECTION 9. 329 IAC 16-11-2 IS ADDED TO READ AS FOLLOWS:

329 IAC 16-11-2 Trust fund for closure and cleanup

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3

Affected: IC 13-14; IC 13-30-2; IC 36-9-30

Sec. 2. An owner, operator, or registrant that chooses to meet the financial assurance requirement of this article through a trust fund shall establish the trust fund for financial assurance in accordance with the following requirements:

(1) The trust fund is established on forms:

(A) provided by the commissioner; or

(B) approved by the commissioner.

(2) Each trust agreement must do the following:

(A) Identify facilities and corresponding closure cost estimates covered by the

trust agreement.

(B) Establish a trust fund in an amount determined by section 1(b) of this rule that guarantees that payments from that fund either:

- (i) reimburse the owner, operator, or registrant of the facility for department-approved closure work done; or**
- (ii) pay the department for doing required closure work.**

(C) Require that annual valuations of the trust be submitted to the commissioner.

(D) Require successor trustees to notify the commissioner, in writing, of their appointment at least ten (10) days before the effective date of the appointment.

(E) Require the trustee to notify the commissioner, in writing, of the failure of the owner, operator, or registrant of the facility to make a required payment into the fund.

(F) Establish that the trust is irrevocable unless terminated, in writing, with the approval of the:

- (i) owner, operator, or registrant of the facility;**
- (ii) trustee; and**
- (iii) commissioner.**

(G) Certify that the signer of the trust agreement for the owner, operator, or registrant of the facility was duly authorized to bind the owner, operator, or registrant of the facility.

(H) All signatures must be notarized by a notary public commissioned to be a notary public in Indiana at the time of the notarization.

(I) Establish that the trustee is:

- (i) authorized to act as a trustee; and**
- (ii) an entity whose operations are regulated and examined by a federal or state of Indiana agency.**

(3) Before the facility begins operation, the owner, operator, or registrant shall:

(A) deposit into the trust fund the amount determined by section 1(b) of this rule; and

(B) submit to the commissioner a receipt from the trustee for the payment into the trust fund.

(4) If the owner, operator, or registrant establishes a trust fund after having used one (1) or more alternative mechanisms, the payment into the trust fund must be in the amount determined by section 1(b) of this rule.

(5) The trustee shall evaluate the trust fund annually, as of the day the trust was created or on an earlier date as may be provided in the agreement. The trustee shall notify the owner, operator, or registrant of the facility and the commissioner within thirty (30) days after the evaluation date.

(6) Release of excess funds may be requested as follows:

(A) If the value of the financial assurance is greater than the total amount of the

current cost estimate, the owner, operator, or registrant of the facility may submit a written request to the commissioner for release of the amount in excess of the current cost estimate.

(B) Within sixty (60) days after receiving a request from the owner, operator, or registrant of the facility for a release of funds, the commissioner shall instruct the trustee to release to the owner, operator, or registrant of the facility the funds the commissioner specifies in writing to be in excess of the current cost estimate.

(7) Reimbursement for removal expenses may be requested as follows:

(A) After initiating removal, the owner, operator, or registrant of the facility, or any other person authorized to perform removal, may request reimbursement for removal expenditures by submitting itemized bills to the commissioner.

(B) Within sixty (60) days after receiving the itemized bills for removal activities, the commissioner shall determine whether the expenditures are in accordance with the removal plan. The commissioner shall instruct the trustee to make reimbursement in the amounts the commissioner specifies in writing in accordance with the removal plan.

(C) If the commissioner determines, based on available information, that the cost of removal will be greater than the value of the trust fund, the commissioner shall withhold reimbursement of the amounts necessary to accomplish removal until it is determined that the owner, operator, or registrant of the facility is no longer required to maintain financial assurance for removal. In the event the fund is inadequate to pay all claims, the commissioner shall pay claims according to the following priority:

- (i) A person with whom the department has contracted to perform removal activities.
- (ii) A person who has completed removal authorized by the commissioner.
- (iii) A person who has completed work that furthered the removal.
- (iv) The owner, operator, or registrant of the facility and related business entities.

(Solid Waste Management Division; 329 IAC 16-11-2)

SECTION 10. 329 IAC 16-11-3 IS ADDED TO READ AS FOLLOWS:

329 IAC 16-11-3 Surety bond for closure and cleanup

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3

Affected: IC 13-14; IC 13-30-2; IC 36-9-30

Sec. 3. An owner, operator, or registrant that chooses to meet the financial assurance requirement of this article through a surety bond shall establish the surety bond for financial

assurance in accordance with the following requirements:

- (1) The surety bond is established on forms:**
 - (A) provided by the commissioner; or**
 - (B) approved by the commissioner.**
- (2) All surety bonds must contain the following:**
 - (A) The establishment of penal sums in the amount determined in section 1(b) of this rule.**
 - (B) A provision that upon notification by the commissioner that the owner, operator, or registrant has failed to close the facility, the surety shall place the total penal sum of the bond into an account as directed by the commissioner.**
 - (C) A provision that the surety may not cancel the bond without first sending notice of cancellation by certified mail to the owner, operator, or registrant and the commissioner at least one hundred twenty (120) days before the effective date of the cancellation.**
 - (D) A provision that the owner, operator, or registrant may not terminate the bond without prior written authorization by the commissioner.**
- (3) The surety company issuing the bond must be:**
 - (A) among those listed as acceptable sureties for federal bonds in Circular 570 of the United States Department of the Treasury; and**
 - (B) authorized to do business in Indiana.**
- (4) The surety will not be liable for deficiencies in the performance of closure by the owner, operator, or registrant after the closure certification is submitted to the commissioner.**

(Solid Waste Management Division; 329 IAC 16-11-3)

SECTION 11. 329 IAC 16-11-4 IS ADDED TO READ AS FOLLOWS:

329 IAC 16-11-4 Letter of credit for closure and cleanup

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3

Affected: IC 13-14; IC 13-30-2; IC 36-9-30

Sec. 4. An owner, operator, or registrant that chooses to meet the financial assurance requirement of this article through a letter of credit shall establish the letter of credit for financial assurance in accordance with the following requirements:

- (1) Establish a letter of credit on forms:**
 - (A) provided by the commissioner; or**
 - (B) approved by the commissioner.**
- (2) All letters of credit must contain the following:**
 - (A) The establishment of credit in the amount determined by section 1(b) of this rule.**
 - (B) Irrevocability.**

(C) An effective period of at least one (1) year and automatic extensions for periods of at least one (1) year unless the issuing institution provides written notification of cancellation by certified mail to both the owner, operator, or registrant, and the commissioner at least one hundred twenty (120) days before the effective date of cancellation.

(D) A provision that, upon written notice from the commissioner, the institution issuing the letter of credit will:

(i) state that the owner, operator, or registrant's obligations have not been fulfilled; and

(ii) if the owner, operator, or registrant has failed to close the facility, place the total penal sum of the bond into an account as directed by commissioner.

(Solid Waste Management Division; 329 IAC 16-11-4)

SECTION 12. 329 IAC 16-11-5 IS ADDED TO READ AS FOLLOWS:

329 IAC 16-11-5 Insurance for closure and cleanup

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3

Affected: IC 13-14; IC 13-30-2; IC 36-9-30

Sec. 5. An owner, operator, or registrant that chooses to meet the financial assurance requirements of this article through insurance shall establish insurance for financial assurance in accordance with the following requirements:

(1) Provide evidence of insurance on forms:

(A) provided by the commissioner; or

(B) approved by the commissioner.

(2) All insurance must include the following:

(A) The establishment of credit in the amount determined by section 1(b) of this rule.

(B) A provision that, upon written notification to the insurer by the commissioner that the owner, operator, or registrant has failed to perform final closure, the insurer shall make payments:

(i) in any amount, not to exceed the amount insured; and

(ii) to any person authorized by the commissioner.

(C) A provision that the owner, operator, or registrant shall maintain the policy in full force and effect unless the commissioner consents in writing to termination of the policy.

(D) A provision for assignment of the policy to a transferee owner, operator, or registrant.

(E) A provision that the insurer may not cancel, terminate, or fail to renew the policy, except for failure of the owner, operator, or registrant to pay the

premium. No cancellation, termination, or failure to renew may occur unless the insurer notifies in writing the commissioner and owner, operator, or registrant at least one hundred twenty (120) days before the event.

(3) In one (1) or more states, including Indiana, the insurer shall either be:

(A) licensed to transact the business of insurance; or

(B) eligible to provide insurance as an excess or surplus lines insurer.

(Solid Waste Management Division; 329 IAC 16-11-5)